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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. [redacted]/~~314~~115

CARROLL DUNSCOMBE,
Petitioner,

vs.

BESSIE F. SAYLE, As Executrix of the Estate of Harold C. Sayle, Deceased,
Respondent.

REPLY BRIEF FOR PETITIONER

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BESSIE F. SAYLE, As Executrix of the Estate of Harold C. Sayle, Deceased,

Respondent.

REPLY BRIEF FOR PETITIONER

I.

INVOLVEMENT OF THE REQUIRED JURISDICTIONAL AMOUNT WAS CLEARLY SHOWN

As stated in the Petition for Writ of Certiorari, pages 7, 12, damages of $250,000.00 were claimed in the Complaint filed by Petitioner in the United States District Court for the Southern District of Florida. (R. 1-13) Accordingly this amount, which more than satisfied the jurisdictional requirement, was affirmatively shown from the record as it existed. If, after or during trial, it was shown that less than the required amount was involved, then ac-

tion by the Court in dismissing for lack of jurisdiction would have been timely, but not before.

Respondent cites, page 4, from *Birmingham Post Co. v. Brown*, 217 F.2d 127, 130 (5th Cir. 1954), that the burden of proof of jurisdictional facts rests upon the plaintiff, or upon the person asserting that the Court has jurisdiction, which, it is submitted, implies that the plaintiff or person should have the opportunity of proving jurisdictional facts, and not be cut off from that basic privilege.

It was held in *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 59 S. Ct. 744 (1939), cited by respondent, page 5, that the question whether the Jurisdictional amount was involved in the District Court is determined by the record of that Court. (590)

INAPPLICABILITY OF RESPONDENT'S CITED CASES

It was held in *Canadian Indemnity Co.* v. *Republic Indemnity Co.*, 222 F.2d 601 (9th Cir. 1955), cited by Respondent, page 5:

> "The complaint sufficiently discloses diversity of citizenship, but neither in the complaint nor elsewhere in the record is there showing of the required amount in controversy." (603)

The Court added that the record is barren of any evidence to disclose any stated amount in controversy, either actual or claimed, and that no evidence to supply the lack of this essential allegation was received at the trial. (603)

Such circumstances do not prevail in the instant cause, in which the Complaints filed by Petitioner in the State Court and also in the United States District Court clearly claimed damages of $250,000.00. (R. 14-25; 1-13)

It was held in *Gully* v. *First National Bank*, 299 U.S. 109, 57 S. Ct. 96, 100 (1936), cited by Respondent, page 6:

> "A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto . . . and the controversy must be disclosed upon the face of the Complaint, unaided by the Answer or Petition for Removal." (113)

That cause involved removal from a Mississippi State Court to the United States District Court, and the Supreme Court of the United States ordered the cause remanded back to the State Court.

Certainly a genuine and present controversy, and not merely a possible or conjectural one, is shown in the above two Complaints which Petitioner filed.

It was held in *Bell* v. *Hood*, 327 U.S. 678, 682, 66 S. Ct. 773, 776 (1946), cited by Respondent, page 6, that where a complaint in a Federal Court is so drawn as to seek recovery directly under the Constitution or laws of the United States, the Court must entertain the suit, except (a) where the alleged claim appears to be immaterial and made solely for the purpose of obtaining jurisdiction, or (b) where it is wholly insubstantial and frivolous. The Court held that the contention of the respondent in that case did not show that petitioner's cause was insubstantial or frivolous, and that the complaint did in fact raise serious questions both of law and fact which the District Court could decide only after it had assumed jurisdiction over the controversy. (683, 684)

Certainly Petitioner's cause as set out in his Complaints was not insubstantial or frivolous, and raised questions both of law and fact. (R. 14-15; 1-13)

Agnew v. *City of Compton*, 239 F.2d 226 (1956), cert. den. 353 U.S. 959, 77 S. Ct. 868, cited by Respondent, page 7, does not rule that the plain purpose of Sections 1981 and 1983, 42 U.S.C., is to provide for equality of rights between persons of different races. Such ruling related to Sections 1981 and 1982, and not to Section 1983, with which the Court dealt separately (230), as follows:

> "We next consider 42 U.S.C.A. 1983. There is a line of cases holding that this Section authorizes an action only for deprivation of due process, but not for denial of equal protection. However we are unable to read such limitation into the Statute, since it refers, broadly, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws. In our view, this Statute is not limited to due process violations."

SECTION 1912, TITLE 28, UNITED STATES CODE

It is axiomatic that a Statute providing for penalties should be strictly construed, and therefore the dicta or a ruling announced by this Court in 1912 (*Deming* v. *Carlisle Packing Co.*, 226 U.S. 102, 33 S. Ct. 80), cited in Respondent's Brief, page 8, ought not to be determinative with respect to the Captioned Statute enacted in 1948, but the latter should receive independent consideration and ruling.

Respectfully submitted,

JOHN WATTAWA
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing Reply Brief for Petitioner has been furnished by mail to C. Robert Burns, Esquire, 205 Worth Avenue, Palm Beach, Florida, Attorney for Respondent, this ..... day of June, 1965.

.....

JOHN WATTAWA
Attorney for Petitioner

END